No. 24-470

IN THE

Supreme Court of the United States

MICHELLE R. GILBANK,

Petitioner,

v.

WOOD COUNTY DEPARTMENT OF HUMAN SERVICES ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Should the *Rooker-Feldman* doctrine—which stops lower federal courts from exercising appellate jurisdiction over state judgments—extend to bar federal claims for damages where the state judgment neither awarded nor denied damages, meaning the federal claim could not vacate or modify the judgment's relief?

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STATEMENT OF INTEREST[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. To that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files amicus briefs.

This case interests Cato because access to a federal forum to seek redress of civil rights violations is essential to the preservation of individual liberty. Cato is concerned that the expansive application of *Rooker-Feldman* endorsed by several lower courts improperly closes the courtroom doors to litigants with otherwise-valid civil rights claims.

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* and its counsel funded its preparation or submission.

SUMMARY OF ARGUMENT

Cato submits this brief to show the Court real-world examples of the harm caused by an overly expansive application of the *Rooker-Feldman* doctrine. These examples demonstrate why it is important for this Court to grant review, lend clarity, and put an end to this misguided approach.

Nearly 20 years ago, in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, this Court held that *Rooker-Feldman* narrows a district court's subject-matter jurisdiction only when four factors are all met. At issue in this case is the fourth factor: whether a plaintiff seeks "review and rejection" of a state court "judgment." 544 U.S. 280, 284 (2005). Simply put, *Rooker-Feldman* does not apply where the plaintiff does not seek to "undo" the state court judgment. *Id.* at 293.

Exxon Mobil's straightforward directive should have sufficed to cabin *Rooker-Feldman* to its statutory roots. But some lower courts have increasingly employed the doctrine as a docket-clearing tool—applying it even when a federal plaintiff does not seek to "undo" a state court judgment. According to those courts, *Rooker-Feldman* applies to claims that might require review—not of a state court judgment—but of a state court's findings, interpretations, applications, holdings, or analysis. This expansive misapplication of *Rooker-Feldman* transforms it from a modest doctrine about appellate jurisdiction into a substantive bar on otherwise-valid federal claims.

The Petition ably describes the existing split between those circuits that apply *Exxon Mobil*'s narrow conception of *Rooker-Feldman* and those that endorse a more expansive version of the doctrine. This brief does not repeat those arguments. Rather, we highlight here several specific instances in which lower courts' expansive application of *Rooker-Feldman* deprived plaintiffs of a federal forum to litigate claims that were not previously adjudicated by a state court. After identifying several discrete examples, we provide empirical evidence that the examples in this brief are not outliers but rather are indicative of a trend that persists throughout the federal judiciary. This court should clarify—as only it can—that *Rooker-Feldman* does not apply when the plaintiff's federal claim and proposed federal remedy were not at issue in the state court judgment.

ARGUMENT

I. DESPITE *EXXON MOBIL*, LOWER COURTS OFTEN EMPLOY *ROOKER-FELDMAN* TO DISMISS CLAIMS THAT WERE NOT ADJUDICATED IN STATE COURT.

Exxon Mobil explained that *Rooker-Feldman* applies only to claims that seek to "undo" a state court judgment. 544 U.S. at 293. However, in the years since *Exxon Mobil*, many lower courts have applied *Rooker-Feldman* to bar claims that were never advanced or adjudicated in state court.

This section provides several examples where lower courts applied an expansive version of *Rooker-Feldman* to dismiss claims that were never litigated in state court. Often, these lower courts used *Rooker-*

Feldman (which is jurisdictional) as a stand-in for issue or claim preclusion (which is not). However, as *Exxon Mobil* explained, this mixing of jurisdictional and non-jurisdictional theories is not allowed: "In parallel litigation, a federal court may be bound to recognize the claim- and issue-preclusive effects of a state court judgment, but federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court." *Id.* at 293.

A. The first pair of exemplar cases are especially noteworthy because, like the present case, they involve parental custody of minor children.

In *Davis v. Garcia*, 953 F. Supp. 2d 1205 (D. Utah 2013), the parents of three minor children temporarily lost custody of them after Utah's Division of Child and Family Services filed a series of verified petitions for protective supervision. *Id.* at 1208–09. During the state court proceedings on the petitions, the state court found that the children could not safely remain in their home and should be placed in the custody of the Division. *Id.* at 1212. Although the children were temporarily removed, the parents later regained custody. *Id.* at 1213.

The parents then commenced a federal action, alleging that their rights under the Fourth Amendment were violated because the children were removed from their home without probable cause. *Id.* at 1217. The parents did not seek to "undo" the state court judgment—nor could they, since their children had already been returned. Rather, they sought monetary damages for harm caused by the

removal of the children from their custody. *Id.* at 1214–15.

But in the district court's view, the type of relief sought was of no moment. It held that even though the federal case sought only monetary damages, adjudicating that claim would require the court to review the state court's conclusion that probable cause supported removal of the children from their home. *Id.* at 1217–18. In the court's view, this was enough to trigger *Rooker-Feldman* and dismiss the federal claims.

This is one of many examples in which lower courts have incorrectly applied *Rooker-Feldman* when an issue-preclusion analysis would have been more appropriate. It is entirely possible that the court would have concluded the parents' legal theory was precluded by the state court's prior determinations. However, that did not mean that the district court lacked *jurisdiction* to decide the parents' claims for monetary damages.

Similarly, *PJ ex rel. Jensen v. Wagner*, 603 F.3d 1182 (10th Cir. 2010), follows this same flawed *Rooker-Feldman* analysis. In that case, a minor child was diagnosed with a rare, life-threatening cancer. *Id.* at 1187–88. Although the child's doctors unanimously recommended that he receive immediate chemotherapy, the parents refused. *Id.* at 1188. Utah's Division of Child and Family Services filed a verified petition and motion to transfer custody and guardianship of the child to the Division to facilitate the child's treatment. *Id.* at 1189. The juvenile court

granted the petition and ordered that the child begin receiving chemotherapy. *Id.* at 1190. Due in large part to the parents continuing and strenuous objections, the chemotherapy treatments never went forward, custody of the child was returned, and the case was dismissed. *Id.* at 1191–92.

Thereafter, the parents and the child filed a § 1983 civil suit for damages against those involved in the Division's efforts to treat the child, asserting substantive and procedural due process claims, as well as claims for malicious prosecution. The court correctly concluded that *Rooker-Feldman* did not bar the substantive and due process claims. *Id.* at 1194. However, it incorrectly dismissed the malicious prosecution claims. *Id.* The court reasoned that to succeed on their malicious prosecution claims, the plaintiffs would have had to convince the federal court that there was no probable cause for the state court proceedings. *Id.* Since the plaintiffs had already received adverse judgments in their state court proceedings, the court concluded that *Rooker-Feldman* eliminated federal jurisdiction over their claims. *Id.*

Once again, the court misapplied *Rooker-Feldman*, employing it simply because issue preclusion *might* have rendered the plaintiffs' claims meritless. The family in *Jenson* did not seek to undo the state court's order compelling chemotherapy—the Division had already abandoned that effort. Rather, the family sought money damages for the ordeal they endured. The court's aggressive application of *Rooker-Feldman*

deprived the family of their day in court and, quite possibly, monetary damages owed by law.

B. Claims arising out of foreclosure proceedings constitute another area where lower courts' vigorous application of *Rooker-Feldman* often bars otherwise-valid claims from proceeding in federal court.

In *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855 (9th Cir. 2008), a homeowner was subject to foreclosure proceedings in Oregon state court. *Id.* at 856–57. Following a "parade of errors," the state court entered default judgment against the homeowner, and the property was sold at a foreclosure sale. *Id.* at 857–58. The homeowner then commenced a federal action, seeking, among other things, monetary damages. *Id.* at 858.

The Ninth Circuit rejected the homeowner's federal claims, and its opinion is noteworthy in two respects. First, the court again failed to acknowledge that the homeowner brought a § 1983 claim, seeking money damages which could not "undo" either the default judgment or the foreclosure sale in state court. *See id.* at 858. As such, those claims did not invite "review and rejection" of the state court judgments, yet the court nonetheless dismissed the claims under *Rooker-Feldman*. *Id.* at 860.

Second, the opinion's articulation of the *Rooker-Feldman* doctrine exemplifies where courts often go awry. After correctly explaining that *Rooker-Feldman* forbids seeking "relief from a state court judgment," the court went on to say, "*Rooker-Feldman* may *also apply* where the parties do not directly contest the

merits of a state court decision." *Id.* at 859 (emphasis added). This is incorrect. *Exxon Mobil* holds that *Rooker-Feldman* applies only when the federal action invites "review and rejection" of the state court "judgment." 544 U.S. at 284. It does not "also apply" where the state court judgment is not directly challenged.

Jester v. Wells Fargo Bank N.A., 297 F. Supp. 3d 1233 (E.D. Okla. 2018), is another foreclosure case that similarly applies *Rooker-Feldman* to bar federal claims simply because they bear some relationship to a previous state court proceeding. Following a state foreclosure action in Oklahoma, a homeowner filed claims in federal court seeking, among other things, "civil monetary penalties available under Oklahoma and federal law." *Id.* at 1239. Although the Oklahoma foreclosure proceedings did not adjudicate a claim for civil monetary penalties, the district court nevertheless dismissed the homeowner's claims under *Rooker-Feldman*. *Id.* at 1241.

As in the prior case, the district court applied an expansive version of *Rooker-Feldman*. First, it correctly noted that *Exxon Mobil* limits *Rooker-Feldman* to claims inviting review and rejection of state court judgments. *Id.* But then, it incorrectly added, "The doctrine *also prohibits* federal courts from hearing any claim that is 'inextricably intertwined' with a state court judgment." *Id.* (emphasis added). This alternative basis on which to apply *Rooker-Feldman* has no basis in *Exxon Mobil*, and it serves

only to close the federal courthouse doors to plaintiffs who may otherwise have meritorious federal claims.

C. Lower courts' expansive reading of *Rooker-Feldman* has also served to cut short federal claims seeking compensation for violations of property rights.

In *Merritts v. Richards*, 62 F.4th 764 (3d Cir. 2023), the Pennsylvania Department of Transportation took two right-of-way easements from a property-owner via *in rem* condemnation proceedings in state court. *Id.* at 769. Because the state action was *in rem*, the property-owner was not a party to that action and did not bring a claim for damages in state court. *Id.* at 775. Instead, after the condemnation, the property-owner commenced a § 1983 action in federal court arguing—for the first time—that he was entitled to compensation for the illegal taking of easements over his property. *Id.* at 770.

The Third Circuit held that *Rooker-Feldman* barred the property-owner's § 1983 claim. *Id.* at 775. It paid no attention to the fact that the property-owner had not—and indeed could not have—sought money damages for the taking in the state court *in rem* proceeding. *Id.* at 769–70, 775. Rather, the Third Circuit focused on whether *Rooker-Feldman* barred a plaintiff *who was not a party to the state court proceedings* from pursuing relief in federal court. *Id.* at 775. On that score, the court held, "Although that was an *in rem* action to which Merritts was not a party, it still determined the status of his property

with respect to all possible interest holders, including him as owner." *Id.*

Consider what *Merritts* stands for. The Third Circuit held that *Rooker-Feldman* strips district courts of jurisdiction to hear claims alleging unconstitutional takings even when the federal court plaintiff (1) was not a party to the state court proceedings and (2) did not bring a claim for monetary damages in state court. *Exxon Mobil* did not contemplate *Rooker-Feldman*'s application to bar federal courts from exercising jurisdiction over federal actions involving different parties and different claims than prior state court proceedings.

D. These examples paint only a small portion of the full picture of *Rooker-Feldman* overreach. *See also Bruce v. City and County of Denver*, 57 F. 4th 738 (10th Cir. 2023); *Mann v. Boatright*, 477 F.3d 1140 (10th Cir. 2007); *Bryant v. Gordon & Wong Law Grp., P.C.*, 681 F. Supp. 2d 1205 (E.D. Cal. 2010); *Fleming v. Gordon & Wong Law Grp., P.C.*, 723 F. Supp. 2d 1219 (N.D. Cal. 2010).

In circuits that embrace an expansive conception of *Rooker-Feldman*, federal claims are snuffed out even when they do not seek to undo a state court judgment. At its most benign, the consequence is the dismissal of cases on jurisdictional grounds when they should more properly be addressed on preclusion grounds. But at its most nefarious, this version of *Rooker-Feldman* strips federal courts of jurisdiction to decide meritorious claims of civil rights violations.

II. THE AVAILABLE DATA INDICATES THAT LOWER COURTS RELIED ON *ROOKER-FELDMAN* CONSIDERABLY MORE OFTEN AFTER *EXXON MOBIL*.

The foregoing examples demonstrate how lower courts have over-relied on *Rooker-Feldman* and deprived specific plaintiffs of a federal forum to litigate their claims. And these are not just isolated examples. The available data indicates that courts have relied on *Rooker-Feldman* to dispose of cases at an even greater rate since *Exxon Mobil* sought to cabin the doctrine.

A. The most robust empirical evaluation of lower courts' reliance on *Rooker-Feldman* since *Exxon Mobil* is a 2015 comment. *See* Raphael Graybill, *The Rook That Would Be King: Rooker-Feldman Abstention Analysis After Saudi Basic*, 32 Yale J. on Reg. 591 (2015). Published 10 years after *Exxon Mobil*, the article analyzed district courts' reliance on *Rooker-Feldman* in the decade before and the decade after the *Exxon Mobil* decision.

Graybill's article yielded two top-line conclusions. First, the number of cases applying *Rooker-Feldman* increased dramatically after *Exxon Mobil* supposedly cabined the doctrine. *Id.* at 599. Graybill summarized:

> At a minimum, the data suggest that *Saudi Basic* has not slowed the appearance or application of *Rooker-Feldman* abstention analysis in district court cases. Indeed, much of the data are consistent with a significant *increase* in the number of cases citing and

> applying *Rooker-Feldman* after *Saudi Basic* and *Lance*. . . . [N]early *ten times* more district court cases cite *Rooker-Feldman* from 2010 to 2014 than from 1997 to 2001.

Id.

The article's second top-line conclusion was this: Courts were just as likely to conclude *Rooker-Feldman* warranted dismissal after *Exxon Mobil* was decided as they were before the decision issued. *Id.* at 599–600. Graybill explained:

> And, when *Rooker-Feldman* arises, courts were just as likely to "say yes" to it (and dismiss the underlying case) before *Saudi Basic* and *Lance* as after. For example, courts appear to apply the doctrine at a relatively steady, increasing rate over time . . . . *Saudi Basic*'s "significant narrowing" does not appear to have registered at all.

Id.

Analyzing these results, Graybill concluded: "In sum, despite the Supreme Court's dual interventions in *Saudi Basic* and *Lance*, abstention analysis under *Rooker-Feldman* remains a popular enterprise at the district court." *Id.* at 601. "Absent a new intervention by the Court, this trend is likely to continue." *Id.* at 602.

B. Lower courts' overreliance on *Rooker-Feldman* has persisted since Graybill's 2015 article. In 2020, Judge Jeffrey Sutton of the Sixth Circuit wrote a compelling concurrence in which he expressed

frustration that *Rooker-Feldman* was "back to its old tricks of interfering with efforts to vindicate federal rights and misleading courts into thinking they have no jurisdiction over cases Congress empowered them to decide." *VanderKodde v. Mary Jane M. Elliotte, P.C.*, 951 F.3d 397, 405 (6th Cir. 2020) (Sutton, J., concurring). Judge Sutton explained, "In [the Sixth Circuit] alone, there have been dozens of post-*Exxon Mobil* cases tangling with the doctrine: by my count, at least 80." *Id.* Then, offering a lengthy string-cite, he added: "We're not alone. *Rooker-Feldman* continues to wreak havoc across the country." *Id.*

Judge Sutton's concurrence even referenced Graybill's article, observing, "One empirical analysis suggests the doctrine proliferated *even more* after *Exxon Mobil*'s attempt to limit it." *Id.* at 407 (quoting Graybill, *supra*, at 591–92). To this, Judge Sutton remarked simply, "That conclusion matches my anecdotal experience." *Id.*

C. By all appearances, *Rooker-Feldman* has remained just as popular among lower courts in the years since Graybill's empirical analysis and Judge Sutton's commentary on the doctrine.

Although a full empirical analysis of the type Graybill prepared in 2015 is beyond the scope of this brief, some insight can be drawn by looking at the number of times federal courts referenced *Rooker-Feldman* in the years since *Exxon Mobil* was decided.

The data below was compiled by running the following search in Westlaw's database of federal decisions for each year in question: "advanced:

'rooker-feldman' & DA(aft 12-31-20XX & bef 01-01-20XX)" (with the "XX" varying depending on the year for which data was being sought).

The results are striking:

2006 — 781 references	2015 — 1198 references
2007 — 926 references	2016 — 1309 references
2008 — 890 references	2017 — 1505 references
2009 — 962 references	2018 — 1611 references
2010 — 1071 references	2019 — 1518 references
2011 — 1102 references	2020 — 1342 references
2012 — 1228 references	2021 — 1296 references
2013 — 1127 references	2022 — 1254 references
2014 — 1200 references	2023 — 1363 references

This data shows that the dramatic increase in reliance on *Rooker-Feldman* following *Exxon Mobil* persists today. References to *Rooker-Feldman* dramatically increased between 2006 and 2019; then fell somewhat during the pandemic years of 2020, 2021, and 2022; and now have begun ticking up once again.

What does this data tell us? An optimist might assume that each year more and more meritorious *Rooker-Feldman* arguments are presented to federal judges. However, in light of the cases described in Section I, another explanation seems more likely: *Rooker-Feldman*'s growing popularity is the product of some lower courts applying a more expansive version of the doctrine than the one this Court mandated in *Exxon Mobil*—one that more readily disposes of otherwise-valid federal claims.

CONCLUSION

In Judge Sutton's *VanderKodde* concurrence, he remarked that the "key words" of the *Rooker-Feldman* analysis "are 'review' and 'judgments.'" 951 F.3d at 406 (Sutton, J., concurring). "The doctrine does not apply to federal lawsuits presenting similar issues to those decided in a state court case or even to cases that present exactly the same, and thus the most inextricably intertwined, issues." *Id.* And yet, that is exactly how many lower courts apply *Rooker-Feldman* today.

Although *Exxon Mobil*'s directive was clear, its implementation in the lower courts over the past two decades has been anything but. As a result, many federal courts routinely decline to exercise jurisdiction over cases that bring civil rights claims that are expressly authorized by Congress. Only this Court can correct the course and return *Rooker-Feldman* to its proper and modest place.

Cato respectfully asks that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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